

Supreme Court, U.S.
FILED

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No. 08-

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

IN RE OSAMA "SAM" ODEH

On Petition for Writ of Mandamus/Prohibition
To

The Honorable U.S. Judge SAMUEL A. LINDSAY
And
The Clerk of Court of the Northern Dist. of Texas,
The Honorable KAREN L. MITCHELL

By: OSAMA "SAM" ODEH
715 Willington Drive
Arlington, Texas
76018
817-808-4855

(i)

QUESTIONS PRESENTED

Question 1.

Can Courts withhold material Orders from litigants, and the public docket of civil cases?

Question 2.

Can courts maintain a second, materially-different version of the docket in a single civil case, which is inaccessible to the public, and contains Orders not entered into the public docket?

(ii)

List of Parties

Respondents:

The Honorable United States District Judge Sam
Lindsay of the Northern District of
Texas

The Honorable Karen Mitchell Clerk of Court of
the Northern District of Texas

Petitioner:

Mr. Osama "Sam" Odeh

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JURISDICTION

The jurisdiction of this Court rests upon 28 U.S.C. §1651(a). The issuance of this Court's writ of mandamus/prohibition is necessary to protect its eventual exercise of appellate jurisdiction over a case pending in the Northern District of Texas, 4:07-CV-411.

STATEMENT

Both Petitioner and the public have qualified First Amendment rights to access judicial records, and Federal law requires that "ALL" orders by judges be entered into THE single public record docket of each case. But Petitioner has discovered the existence of a parallel, "Internal Use Only" docket of his litigation in North Texas, containing at least **two orders** by U.S. judges which have not been entered into the public record of his case 4:07-CV-411.

The missing orders may explain why/how Petitioner's pure personal capacity *Bivens* action 4:07-CV-411 has been converted into a hybrid personal/official capacity suit, since the Court has refused to issue any order *in the public record* explaining the entrance of the United States therein. Your Petitioner is thus being prevented by the Court from appealing the secret orders concealed in the parallel docket. And he has no remedy other than that which this Court can provide, as shown below.

BACKGROUND

In what appears to be another case of first impression, Your Petitioner filed a *Bivens* action in 2007 against certain officers/employees of the Northern District of Texas for their "forum shopping" scheme, which changed the outcome of a post-incarceration *coram nobis* motion filed by Petitioner in 2004. (See Footnote 1, *infra*, for details.)

In his *Bivens* Complaint in 4:07-CV-411, Your Petitioner set forth explicit facts tending to prove that the penultimate goal of those involved in the '04-'06 administrative manipulation of his *coram nobis* motion was to prevent Petitioner from securing reversal of his baseless 1998 guilty-plea conviction. Petitioner also set forth in his *Bivens* Complaint the ultimate goal of the forum shopping scheme in 2004: to deprive Petitioner of standing to initiate suit against those responsible for convicting him without cause, despite the fact he was an innocent helpless immigrant. The scheme succeeded.¹

It should also be noted that in a related civil action, (4:06-CV-225), the Honorable Judge John McBryde entered an Order on 8 May 2006, holding: "If the other allegations made by Sam are true, the undersigned was a victim of fraudulent conduct on the part of attorneys Evans and Heiskell" during Your Petitioner's 1998 criminal prosecution. See Appx. Pg. 8a, Exh."A", Order of 8 May 2006 in N.D. Tex. cause 4:06-CV-225. That Order provides incontrovertible support to Petitioner's Complaint allegations in 4:07-CV-411 that "but for" the Defendant officers' 2004

RELEVANT FACTS

In filing 4:07-CV-411, Your Petitioner sued the federal officers and employees solely in personal capacity pursuant to *Bivens*, and solely for money damages. But he deliberately and carefully sought NO relief that would affect the operation of the Government, and sought NO damages from the U.S. Treasury.²

Despite Your Petitioner's stated effort to reach the Defendants personally for their 2004 administrative docket manipulations, the United States entered the case on 1 February 2008. The entire explanation proffered by the DoJ supposedly justifying its entrance was contained in footnote 3 of a document styled "Defendants' Motion to Dismiss", which incorrectly states:

forum shopping scheme, Petitioner's *coram nobis* would have come before Judge McBryde, and he would have dismissed Petitioner's criminal conviction, due to attorney fraud.

After being diverted from Judge McBryde, the *coram nobis* was subsequently dismissed for purported "failure to seek earlier relief", but Your Petitioner's *coram nobis* allegations of attorney fraud were utterly ignored, unlike Judge McBryde's extensive discussion of the subject in 2006.

² Petitioner knew that suits brought against a federal official in his individual capacity for violations of a plaintiff's constitutional rights are not suits that require the consent of the U.S. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388. Also see generally 14 C.Wright, A. Miller & E. Cooper, Federal Practice and Procedure, Sec. 3655.

"[D]espite Plaintiff's attempt to fashion an individual capacity action, the conduct challenged demonstrates that his claims are instead against the sovereign, thus requiring a waiver of sovereign immunity that has not been pled and is not present. See *Bank One, Texas, N.A. v. Taylor*, 970 F.2d 16, 33 (5TH Cir. 1992), *cert denied*, 508 U.S. 906 (1993)."

On 1 April 2008, Petitioner providentially received a copy of the "Internal Use Only" docket of 4:07-CV-411. Therein he discovered at least two orders issued by U.S. judges in the case, neither of which have been entered into the public record.

One of the missing orders, to which reference is made in the parallel version of the docket but not in the public record, was issued on 17 July 2007. [See Appx. Pg. 15a, Ex."D", unnumbered entry that date.] It *may* contain a judicial finding converting Petitioner's personal capacity suit into a suit against the sovereign. But because the order is concealed in the Internal Use Only parallel docket, Petitioner cannot view or appeal it.

The second missing order issued by the Court but concealed from the public in the Internal Use Only docket, was made on 15 October 2007. [See Appx. Pg. 20a, Exh."D", unnumbered entry that date] Again, that order *may* also contain the judicial finding converting 4:07-CV-411 into a suit against

the U.S., thus justifying the entrance of the DoJ. But since that order was also not entered into the public record, Plaintiff and the public are again being denied opportunity to view its holdings.

Additionally, besides the missing orders, Petitioner requests the Court note that both the public and parallel dockets of 4:07-CV-411 refer to highly unusual *sua sponte* correspondence issued by the Court on 15 August 2007 to the General Counsel of the Executive Office of the United States Attorney in Washington, D.C. [See Appx. Pg.16a, Exh.D, Doc.Entry 9.] Although the fact is clear the Court sent *something* to the DoJ, the Court has pointedly declined to reveal the full contents of the document it directed to the DoJ,³ [See Appx.Pg.10a, Exh."B", Order denying Your Petitioner's Motion to Clarify Docket Anomaly], or place a copy of the document in the public record.

On 5 May 2008 Your Petitioner attempted to file his Rule 60(a) motion seeking to correct the District's "error" of operating dual competing dockets in 4:07-CV-411, and to compel the Court to enter its

3 Any reply from the EOUSA/DoJ to the Court's 15 August correspondence has also been withheld from the public record. Docket Entry 9, [Appx. Pg.16a] states that the document issued by the Court was supposedly related to the appointment of Judge Lindsay to 4:07-CV-411. But since the DoJ has PACER, it would be remarkable if the Court wasted scant judicial resources sending a paper announcement to the DoJ of the recusal/appointment of judges in the case.

orders and correspondence with the DoJ into the record of that extraordinary case. The District has prevented Your Petitioner's Rule 60(a) motion from even entering the docket, and in utter derogation thereof is pressing instead to hear and determine the DoJ's motion to dismiss.

For quite some time Your *pro se* Petitioner was confounded by the strange claim of the United States in its Motion to Dismiss, i.e., that "conduct challenged" by a plaintiff could supposedly transform a personal capacity suit into a suit against the U.S. But at length, five things became clear.

First, the DoJ's claimed basis for entrance into 4:07-CV-411 is nonsense. The sole case cited by the United States as support for its claim, *Bank One v. Taylor*, never even mentions the words "conduct challenged".⁴ Nor does *Bank One* authorize conversion of pure *Bivens* actions into official capacity suits based upon acts alleged by a plaintiff.⁵

4 Although the phrase "conduct challenged" *is* used extensively in context of federal securities litigation, (See *Credit Suisse Securities v. Billing*, 127 S.Ct 238, U.S. Lexis 7724, (2007)), it is NEVER used in the context of *Bivens* cases.

5 In actuality, *Bank One* teaches that courts determine the capacity of federal officer/defendants based upon review of relief requested by the plaintiff. If relief sought would impact the U.S. Treasury or effect the administration of the government, the suit is construed as against the official capacity of any federal defendant, hence, against the U.S. Not so Petitioner's suit

Second, it became clear at length to Your *pro se* Petitioner that defense counsel cannot unilaterally convert a plaintiff's personal capacity suit into an official capacity suit, no matter who the defendants are. Third, authority for the entrance of the U.S. into 4:07-CV-411 thus had to have come from a *judicial officer*. Fourth, no order from a judge on the subject appears in the record. And fifth, the Court has pointedly refused to explain the basis for entrance of the U.S. into the case. [See Appx. Pg.10a, Ex. "B", Order also denying Your Petitioner's motion to prevent improper insertion of U.S. into 4:07-CV-411].

REASONS FOR GRANTING PETITION

Petitioner respectfully requests the Court review the following three issues, which will bring into focus why this petition should be granted.

1. Personal capacity suits and the DoJ

When federal employees are sued solely in personal capacity for money damages, the U.S. is not obligated to defend or indemnify the officers. [28 CFR 50.15.] In fact previous to entrance by the DoJ into any purely personal capacity suit, 28 CFR 50.15 requires a DoJ officer to certify that the acts by the federal defendants of which complaint has been made were "within the scope of the employment" of the defendant.

Thus, in application of 28 CFR 50.15 to Petitioner's *Bivens* action 4:07-CV-411, the regulation requires that previous to the entrance by the DoJ into his strictly personal capacity suit, a DoJ official should have certified that the 2004 administrative docket manipulation collusion of the Defendants was "within the scope of their employment". [Since scope of employment certifications have been held by the Supreme Court to be reviewable in district courts,⁶ on 29 April 2008 Petitioner filed his motion challenging any assumed certification made by the DoJ in regard to 4:07-CV-411 as "untrustworthy", due to principles established by controlling Texas agency law. But his motion on the subject remains unaddressed by the Court, while the Court instead presses to hear/decide the DoJ's motion to dismiss.]

2. ALL Orders SHALL be entered into the Docket

The Federal Rules of Civil Procedure are promulgated by the Supreme Court pursuant to the Rules Enabling Act of Congress. Those Rules, having been presented to, and amended by, Congress. [28 U.S.C. 2071] They "GOVERN" the proceedings in United States district courts in ALL federal civil suits and are binding law. [See FRCivP Rule 1] FRCivP

Rule 79 states in pertinent parts "all orders, verdicts and judgments shall be entered chronologically in the civil docket". [Emphasis added].

⁶ See *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, (1995).

Sadly, since there are orders issued by U.S. judges in 4:07-CV-411 that have NOT been entered into the record as required by law, the possibility cannot be ruled out that a North Texas District judge issued an order to allow the DoJ to circumvent 28 CFR 50.15, (thus judicially converting Petitioner's pure *Bivens* action into a hybrid capacity suit), which order the Court is concealing in a parallel docket to prevent appeal. Restated: the Court appears to be preventing Petitioner from raising or appealing the improper entrance of the DoJ into his case, by issuing secret orders in a secret docket.

3. Parallel dockets vs Petitioner's rights to access

Courts of Appeals in the Eleventh, Fourth and Second Circuits have rejected attempts by lower courts to utilize secret docket sheets to conceal judicial records. In *United States v. Valenti*, 987 F.2d 708, (1993) the Eleventh Circuit held that a secret dual docketing system in the Middle District of Florida violated the public's and press' First Amendment right of access to judicial records, then declared the practice facially unconstitutional.

In the case of *In re State-Record Company, Inc.*, 917 F.2d 124, (1990), the Fourth Circuit held that sealing docket sheets violated the public's First Amendment rights, noting that "we cannot understand how the docket entry sheet could be prejudicial". And in *The Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, (2004), the Second Circuit

rejected attempts to conceal dockets from public review, holding that the public and press have a qualified First Amendment right to docket sheets, as "an index to the records of judicial proceedings".

It is thus beyond challenge that Petitioner has at least a qualified right to view orders issued by a court in his civil litigation, made stronger in the absence of any demonstrated interest requiring secrecy. Moreover, Petitioner clearly has an arguable common law right to access judicial records. See *Nixon v. Warner Communications*, 435 U.S. 589, (1978), (recognizing a general right to inspect and copy public records and documents, including judicial records and documents").

Clearly, operation by a Court of a secret docket violates the longstanding judicial policy requiring open docket access, and gives rise to the appearance of unfairness in the proceedings and the fact-finding process. See *Press Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984).

Finally, considering the question in its obverse, not a single judicial authority in U.S. history has approved the practice of concealing material judicial orders in a parallel docket of a civil case.

SUMMARY

Federal law requires that there be ONE unified public record docket of cases, that ALL orders of judges be entered into the unified single record of any case, to which the public and parties have protected First Amendment rights of access to inspect, copy and appeal, absent countervailing demonstrated interest.

The issuance of orders concealed in a parallel "internal use only" docket violates the First Amendment rights of Petitioner and the public to access judicial records, particularly since there is no determination in the record of any overriding privacy concern. Further, the District's use of a shadow docket to shield its orders (and perhaps correspondence with the DoJ) is preventing Your Petitioner from knowing or appealing the fact and rationale of the status-altering conversion by the Court of his personal capacity *Bivens* action into a suit against the U.S.

NO OTHER REMEDY

Petitioner has no other remedy, since in a recent appeal to the Fifth Circuit, (07-11179), that Court threatened him with sanctions should he attempt to seek relief there from "any other action arising from or connected with the facts underlying the appeal" in 07-11179.⁷ [See Appx. Pg. 11a, Exh."C"]

⁷ As is its custom, the Circuit dismissed the recent appeal of Petitioner without mentioning Judge John McBryde's 8 May 2006 finding, threatening sanctions but without identifying a single word filed by Petitioner as "contumacious", etc.

Because, as the Fifth Circuit is well aware, ALL federal litigation involving Petitioner is directly related to the underlying 1998 attorney fraud noted by the Honorable Judge John McBryde in his Order of 6 May 2006,⁸ remedy at the Fifth Circuit has thus been foreclosed to Petitioner.

Petitioner respectfully contends the District Court is aware there is no remedy at the Circuit for Petitioner, and that the District also knows it is statistically impossible for *pro se* litigants to secure remedy from the Supreme Court. Hence the District's disregard of Petitioner's ever respectful objections to the parallel docket, the secret orders, the improper entrance of the U.S. into his case, etc.

This Court is the ONLY resort for Petitioner to secure relief from the highly irregular docket manipulations now occurring in North Texas. And to ensure the accuracy of any record forwarded to this Court in any subsequent appeal, Petitioner respectfully requests the following requested relief.

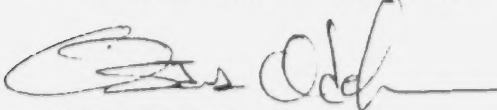
⁸ But Judge McBryde's order on the subject has been ignored by the Circuit and every other United States judge, despite Petitioner's repeated attempts to bring it to their attention.

REMEDY REQUESTED

Petitioner respectfully requests this Court issue its Writ of Mandamus / Prohibition to compel the Honorable SAM LINDSAY and Clerk KAREN MITCHELL, of the Northern District of Texas, to:

1. Enter every order issued by a U.S. Judge in relation to 4:07-CV-411 into the public record; and
2. Provide Petitioner copies of every document, correspondence or order issued by a U.S. judge regarding 4:07-CV-411, including but not limited to that referenced in Docket Entry No. 9, and the unnumbered entries made in the "Internal Use Only" docket on 17 July 2007 and 15 October 2007; and
3. Cease maintaining dual competing dockets in any case.

It is so moved and respectfully submitted,

A handwritten signature in black ink, appearing to read "Sam Odeh", with a long horizontal flourish extending to the right.

SAM ODEH

715 Willington Drive
Arlington, Texas 76018
817-808-4855

APPENDIX

Exh. "A" Order by The Honorable U.S. Judge John McBryde, entered 8 May 2006 in a *Bivens* action by Petitioner and his father in the Northern District of Texas, cause 4:06-CV-225.

"Order

This is an action brought pursuant to *Bivens* and 42 U.S.C. § 1983 by Ali Odeh ("Ali") and Osama "Sam" Odeh ("Sam"), collectively plaintiffs, against, among others, Timothy Evans ("Evans"), an attorney who, plaintiffs allege, once represented Sam in the criminal case described in plaintiffs' complaint, and Michael P. Heiskell ("Heiskell"), another attorney who, plaintiffs allege, was shown of record as an attorney for Sam in the same criminal action.

The complaint filed April 28, 2006, as amended ("amended complaint") alleges a complex set of facts that plaintiffs maintain support their contention that Evans and Heiskell collaborated with government officials¹ to violate their constitutional rights. According to the allegations, Ali and members of his family, including his son Sam, were the largest exporters of high-quality, late-model used vehicles to Kuwait. Plaintiffs apparently maintain that their business was intentionally destroyed by collusive action of all the defendants named in the amended complaint in violation of plaintiffs' constitutional rights.

They allege that the early aspects of the allegedly collusive action resulted in a criminal indictment filed on August 13, 1997, in the Fort Worth Division of this court against a corporation through which Plaintiffs and their family conducted a part of their export business and several members of the family, including Sam. The indictment charged members of the Odeh family with one or more offenses pertaining to the tampering with the odometers of vehicles that were to be exported to Kuwait, and one of the family members with the making of false statement to a bank whose deposits were insured by the FDIC with respect to exported vehicles. The indictment was dismissed as to the corporation. Each of the indicted family members pleaded guilty in the late 1990's to one or more of the offenses charged by the indictment.

By way of relief, plaintiffs seek (1) a declaratory judgment that the defendants, in deliberate and willful disregard of the limits of their lawful jurisdiction, engaged in acts outside their jurisdiction in support of a broad collusion to violate plaintiffs' constitutionally protected rights, (2) injunctive relief, and (3) money damages for actual losses of \$149,000,000 and punitive damages of \$150,000,000.

On May 2, 2006, plaintiffs filed a document titled 'Plaintiffs' Motion to Compel Production of Court Records...'.... In the course of making inquiry into the matters mentioned in the motion, and after having reviewed the allegations of the amended complaint, the undersigned has concluded that he

should recuse. Bearing in mind that the preferred course is for a judge who is recusing to document the reasons for his decision, see *Hagan v. Coggins*, 77 F.Supp. 2d 776, 778 n.2 (N.D. Tex. 1999), the court is setting forth below his reasons for the recusal.

Plaintiffs alleged in their amended complaint that commencing in July 1998 Evans and Heiskell engaged in fraudulent conduct to defraud the court into thinking that Heiskell was Sam's attorney in the criminal case at Sam's initial appearance even though Evans was the one to whom Sam had paid a significant fee to represent him and who actually represented Sam at that time. Am. Compl. At 15017, pps 56-66. The district judge adversely affected by the allegedly fraudulent conduct is not identified in the amended complaint. However, the undersigned confirmed from the review he made of the court records as a part of his inquiry into the May 2 motion to compel, that plaintiffs are claiming that the conduct of Evans and Heiskell had as its goal causing the criminal case to be removed from the undersigned's docket and to be transferred to a district judge in the Dallas Division of the court.

Documents on file in the criminal case alleged with greater particularity the events to which plaintiffs refer at pages 15-17 of the amended complaint. In a document filed October 29, 2004, titled 'Motion to Return Case to the Honorable Judge McBryde's Appellate Jurisdiction', Sam, who is referred to in the quoted language as 'Petitioner', made the following allegations:

Petitioner's counsel [Evans] lied to him in order to justify a change of venue, claiming to Petitioner that he could not get justice in Judge McBryde's courtroom because that Judge supposedly harbored grudges against counsel Evans. In a manner unknown at this time to Petitioner, (Evans refuses to release his case file to Petitioner), his counsel secured a change of venue to Dallas, where Evans likely paid another attorney, from fees he received from Petitioner, to appear as counsel. In light of the facts that

1. The case originated in front of Judge McBryde's bench; and
2. Mr. Evans received \$35,000 to represent Petitioner, just as Evans had already received \$35,000 to represent Petitioner's brother, who Evans also advised to plead guilty in the same case; and
3. Evans falsely advised Petitioner, (and Petitioner relied upon that advice), that he could not get a fair trial in front of Judge McBryde; and
4. Evans appears to have kept the funds given him by Petitioner but substituted another attorney, Michael Heiskell, as attorney of record in Petitioner's case; and
5. Evans appears to have paid Heiskell from funds given him by Petitioner making Heiskell Evans' agent,

(since Petitioner never paid Heiskell a dime or spent one minute preparing a defense of his case with Heiskell); and
6. Messrs. Evans and Heiskell appear to have conspired to manipulate, and succeeded in manipulating, forums securing transfer of the case to Dallas while making a false record that Petitioner himself had retained Heiskell; and

7. That Judge McBryde remains as the judge of record over the case involving the underlying convictions of Petitioner's brothers; and

8. That Judge McBryde is fit and capable of reviewing cases arising before his bench, which are assigned to magistrates but then subsequently appealed to a judge, Petitioner moves the case be correctly re-assigned to Judge McBryde's appellate jurisdiction, from whence it lawfully arose. Such equitable result will replace the parties in exactly the same positions held before Mr. Evans' apparently self serving forum manipulation.'

Mot. To Return Case to the Hon. Judge McBryde's Appellate Jurisdiction at 1-2.

Similarly, in a document filed in the criminal case on December 7, 2004, Sam made the following allegations:

Moreover, Petitioner carefully alleged that all the officers of the court involved in the case against him knew or should have known that he

16. Paid Mr. Tim Evans [\$35,000 in cash] to represent him after his brothers were jailed and before he came home from their dealership in Kuwait to support his brothers' families; and that

17. Mr. Evans had already represented Petitioner's brother Jamal in the same criminal case, (Evans had previously received \$35,000 from the family for Jamal's 'defense'; and that

18. Mr. Evans sought to conceal his receipt of dual fees from two defendants in the same criminal case by substituting counsel of Evan's selection as a virtual "front man"; and that

19. To conceal his improper acceptance of dual fees, Mr. Evans chose as his surrogate an attorney who had sued the Honorable Judge McBryde of Fort Worth and was on a list of attorneys designated by order of the Circuit as not allowed to come before McBryde's bench, thus creating colorable cause to have the case transferred out of the jurisdiction of Judge John McBryde to the jurisdiction of Dallas, and thus concealing Evan's improper dual involvement; and that

20. Although Mr. Evans never made an official appearance in the record of the case, he appeared as spectator in court for the hearings in the case; and that

21. In spite of the fact Mr. Tim Evans made sure not to make an official entrance into the record of Petitioner's case, it was Mr. Evans who arranged the details of Petitioner's surrender to the U.S. Marshals and Customs officers before Petitioner returned from the Middle East to the U.S.; and

22. Mr. Evans also made the arrangements for bail with the same AUSA before Petitioner arrived back in the U.S.; and that

23. Mr. Evans and his chosen surrogate filed nothing other than three boilerplate motions in Petitioner's defense, one of those motions so unprofessionally crafted as to state: "Defendant Dr. Hernan Enrique Burgos hereby moves the court...", while never raising a single objection to the prosecution or raising a single defense of Petitioner at any time; and that...'

Pet'r's Objection to Findings, Conclusions and Recommendation of Magistrate and Mot. For Evidentiary Hr'g at 6-7.

Paragraph 19 of the language quoted immediately above has reference to the order of the Judicial Council of the Fifth Judicial Circuit that is referenced in *U.S. v. Harmon*, 21 F. Supp. 2d 642, 644 (N.D. Tex. 1998). Sam appears to be correct in his allegation that the criminal case was removed from the undersigned's docket by reason of the entry by Heiskell of an appearance as Sam's attorney in the case. Thus, if the other allegations made by Sam are true, the undersigned was a victim of fraudulent conduct on the part of Evans and Heiskell. The undersigned does not have knowledge that Evans and Heiskell did what Sam contends they did with fraudulent intent. However, if they did, their conduct would not be an isolated occurrence.²

Title 28 U.S.C. § 445(a) provides that any judge of the United States 'shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.' The "impartiality" test relates to the attitude of the judge toward a party to the litigation, not the party's attorney. *U.S. v. Harmon*, 21 F. Supp. 2d at 645. Here, the allegations of plaintiffs against Evans and Heiskell might be viewed by some to raise a question as to whether the undersigned could be completely impartial in adjudicating their rights as parties to this litigation. The undersigned has no doubt that he would be completely fair and impartial in adjudicating the rights of Evans and Heiskell, but to large extent the test is one of perception rather than fact.

Therefore, the undersigned hereby RECUSES and directs the clerk of court to make an appropriate reassignment of the above captioned case to another U.S. District Judge.

SIGNED May 8, 2006. /s/ John McBryde
U.S. District Judge"

¹ Also named as defendants are two United States District Judges, a United States Magistrate Judge, the United States Attorney for the Northern District of Texas, an Assistant U.S. Attorney, the Clerk of the U.S. Court of Appeals for the 5th Circuit, a judge of the 5th Circuit, a court reporter employed by the U.S. District Court for North Texas, and other government officials.

² The undersigned has received reports, and has seen evidence, of other instances when an attorney named on the list accompanying the December 31, 1997, order of the Judicial Council was used for the purpose, sometimes for the sole purpose, of causing a case to be transferred from the undersigned's docket or to be assigned to the docket of the other [Fort Worth] judge instead of the undersigned's. *U.S. v. Harmon*, 21 F. Supp. 2d 642 (N.D. Tex. 1998), is but an example of such an occurrence. In *Harmon*, Heiskell moved to be substituted as the attorney for the defendant shortly before trial and moved for recusal of the undersigned on the ground that the undersigned was obligated to recuse by reason of the Dec. 31, 1997, order of the Judicial Council. Other reported instances when recusal was sought by reason of the Judicial Council proceeding are discussed in *U.S. v. Marshall*, 77 F. Supp. 2d 764 (N.D. Tex. 1999).

Exhibit "B" 21 March 2008
Order by Judge Sam Lindsay

"On September 10, 2007, the court referred this case for pretrial management to United States Magistrate Judge Wm. F. Sanderson, Jr. The court now vacates that order to the extent it will rule on Plaintiff's Motion to Clarify Docket Anomaly, filed August 21, 2007, and Plaintiff's Motion to Prevent Improper Insertion of United States Counsel into this case, filed August 21, 2007.

"In Plaintiff's Motion to Clarify Docket Anomaly, Plaintiff Osama "Sam" Odeh requests clarification of a docket entry for this case. Plaintiff asserts that he needs clarification of six issues regarding the entry, which simply documents that the July 20, 2007 order was mailed via certified mail to the Office of General Counsel, and that it was received. The court determines that the docket entry is self-explanatory and needs no further explanation. Accordingly, the court denies the Motion to Clarify Docket Anomaly.

"Plaintiff also moves to 'prevent the improper insertion of United States counsel into this case.' United States counsel has since appeared on behalf of Defendants, and Plaintiff has also filed subsequent motions and an entirely new case, 4:07-CV-715" [sic, likely reference to 4:08-CV-092], "seeking damages from the appearance of government counsel on behalf of Defendants. Accordingly, the court denies

without prejudice the Motion to Prevent Improper Insertion of United States Counsel into this case and will consider Plaintiff's arguments when considering the later-filed motions. It is so ordered this 21st day of March, 2008. /s/ Sam A. Lindsay"

Exhibit "C" Fifth Circuit Order
Circuit cause 07-11179

"Per Curiam:

Affirmed. See Rule 47.6. Plaintiff-Appellant Odeh is cautioned that any further effort to continue, prolong, or otherwise maintain this or any other action arising from or connected with the facts underlying the instant appeal could, and likely will, result in the imposition of sanctions for frivolous appeals and maintaining baseless, meritless, and contumacious litigation."

Exh. "D"

US. District Court
Northern District of Texas (Ft. Worth)
Civil Docket For Case # 4:07-CV-00411

INTERNAL USE ONLY

Odeh v. Mitchell et al
Assigned to: Judge Sam A. Lindsay
Referred to: Magistrate Judge Wm. F. Sanderson, Jr.
Member case:
4:07-cv-00715 Cause 28:1331
Federal Question: Other Civil Rights

Plaintiff
Osama 'Sam' Odeh
Represented by Osama 'Sam' Odeh
1705 Willington Drive
Arlington, TX 76018
817-808-4855
PRO SE

5

Defendant

Ms. Karen Mitchell

Represented by Mattie Peterson Compton

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Fort Worth, TX 76102

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ATTORNEY TO BE NOTICED

ET AL

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/13/2007	1	ORIGINAL COMPLAINT against Charles Fulbruge, Allison Lopez, William Suter, Jeffrey Atkins, Richard Roper, Angela Lee Henson, Michael Worley, Karen Mitchell, A Joe Fish, Terry Means, Janet Baggett, E Grady, E Jolly, Carolyn Dineen King, Charles Bleil filed by Osama 'Sam' Odeh. (Filing fee \$350; Receipt number fw003715) (wrb) (Entered: 07/16/2007)
07/13/2007		DEMAND for Trial by Jury by Osama "Sam" Odeh (wrb) (Entered: 07/16/2007)
07/13/2007	2	The Honorable Judge John McBryde Requested to Notice Certain Law and Facts Relevant to Recusal and MOTION by Osama 'Sam' Odeh (wrb) (Entered: 07/16/2007)
07/13/2007	3	Summons Issued as to Charles Fulbruge, Allison Lopez, William Suter, Jeffrey Atkins, Richard Roper, Angela Lee Henson, Michael Worley, Karen Mitchell, A Joe Fish, Terry Means, Janet Baggett, E Grady E Jolly, Carolyn Dineen King, Charles Bleil, (wrb) (Entered: 07/16/2007)

Date Filed	#	Docket Text
07/13/2007		NOTICE of Change of Address by Osama "Sam" Odeh. New address is: 715 Willington Drive, Arlington, Tx 76018, 817-808-4855 (wrb) (Entered: 07/16/2007)
07/16/2007	4	Court Request for Recusal: Judge Terry R Means recused. Pursuant to instruction in Special Order 3-249, the Clerk has reassigned the case to Judge John McBryde for all further proceedings. (dld) (Entered: 07/17/2007)
07/17/2007	5	ORDER OF RECUSAL: Case is assigned to the docket of Judge John H. McBryde. See order for specifics. (Signed by Judge A. Joe Fish on 07/17/2007 (epp) (Entered: 07/17/2007))
07/17/2007		(Court only) ***Motions terminated: 2 MOTION for Recusal filed by Osama 'Sam' Odeh. (per chambers-see#5) (jrb) (Entered: 07/30/2007)
07/18/2007	6	ORDER: in a related civil action the undersigned recused for reasons given in an order signed May 8, 2006 in 4:06cv225-K, the undersigned recuses and directs the clerk of court to make appropriate reassignment. (Signed by Judge John McBryde on 7/18/07(dld) (Entered: 07/18/2007)

Date Filed	#	Docket Text
07/18/2007		Based on the Court's Request for Recusal (Judge John McBryde recused), and pursuant to instruction in Special Order 3-249, the Clerk has reassigned the case to Judge Ed Kinkeade for all further proceedings. (lrl) (Entered: 07/18/2007)
07/19/2007	7	Court Request for Recusal: Judge Ed Kinkeade recused. Pursuant to instruction in Special Order 3-249, the Clerk has reassigned the case to Judge Sam A Lindsay for all further proceedings. (lrl) (Entered: 07/19/2007)
07/20/2007	8	ORDER OF RECUSAL: Case is assigned to the docket of Judge Sam A Lindsay. See order for specifics. (Signed by Judge A. Joe Fish on 07/20/2007 (epp) (Entered: 07/20/2007)
08/15/2007	9	Certified Mail Executed as to Office of Gen Cnsl. Wasington, DC on 8/8/07 re: <u>8</u> (wrb) (Entered: 08/16/2007)
08/21/2007	10	MOTION to clarify docket anomaly by Osama 'Sam' Odeh (wrb) (Entered: 08/21/2007)
08/21/2007	11	MOTION to secure service by US Marshals by Osama 'Sam' Odeh (wrb) (Entered: 08/21/2007)

Date Filed	#	Docket Text
08/21/2007	12	MOTION to prevent improper insertion of United States Counsel into this case by Osama "Sam" Odeh (wrb) (Entered: 08/21/2007)
08/21/2007	13	FIRST AMENDED COMPLAINT against Charles Fulbruge, Allison Lopez, William suter, Jeffrey Atkins, Richard Roper, Angela Lee Henson, Michael Worley, Karen Mitchell, A Joe Fish, Terry Means, Janet Baggett, E Grady E Jolly, Carolyn Dineen King, Charles Bleil filed by Osama 'Sam' Odeh. (wrb) (Entered: 08/21/2007)
09/05/2007	14	ORDER REFERRING CASE to Magistrate Judge Charles Bleil for pretrial management...see order for further specifics (Signed by Judge Sam A Lindsay on 9/5/07 (pdm) (Entered: 09/05/2007)
09/07/2007	15	ORDER: It is requested that this civil action be referred to another magistrate judge in this district for pretrial management. (Signed by Judge Charles Bleil on 9/7/07) (dld) (Entered: 09/07/2007)

Date Filed	#	Docket Text
09/07/2007		(Court only) ***Magistrate Judge Sanderson chosen by random selection to handle matters that may be referred in this case. ***Set SANDERSON flag, CASE Returned to District Judge: Judge Charles Bleil no longer assigned to case. (lrl) (Entered: 09/07/2007)
09/10/2007	16	ORDER REFERRING CASE to Magistrate Wm F Sanderson, Jr for pretrial management. (Signed by Judge Sam A Lindsay on 9/10/07) (pdm) (Entered: 09/10/2007)
09/10/2007		CASE REFERRED to Magistrate Judge Wm F Sanderson, Jr for pretrial management. Motions 10, 12 referred to Wm F Sanderson, Jr per request of Judge Lindsay's chambers / Order of Ref. Dated 9/10/07) (pdm) (Entered: 10/25/2007)
09/24/2007	17	Summons Issued as to Charles Fulbruge, Allison Lopez, William Suter, Jeffrey Atkins, Richard Roper, Angela Lee Henson, Michael Worley, Karen Mitchell, A Joe Fish, Terry Means, Janet Baggett, E Grady E Jolly, Carolyn Dineen King, Charles Bleil. (Attachments: #1) (wrb) (Entered: 09/24/2007)

Date Filed	#	Docket Text
09/25/2007	18	Notice of Pltf's Full Payment to US Marshal to Serve Defts., Affidavit in Support, and MOTION for Order to Show Cause Why Costs of Service Should Not be Imposed Upon Defts. By Osama 'Sam' (lrl) (Entered: 09/07/2007)
10/01/2007	19	Plaintiffs "Standing" MOTION To Recuse All Northern District of Texas Judicial Officers by Osama 'Sam' Odeh (wrb) (Entered: 10/01/2007)
10/02/2007	20	ORDER denying <u>18</u> Motion for Order to Show Cause. A copy of this order shall be transmitted to pltf and to the USM Dallas Division. (Signed by Judge Wm F Sanderson Jr on 10/2/07 (wrb) (Entered: 10/02/2007)
10/05/2007	21	SUMMONS Returned Executed as to Karen Mitchell ; served on 10/3/2007 USM 285, signed by Leigh Lyon, Deputy Clerk (wrb) Entered 10/05/2007)

Date Filed	#	Docket Text
10/05/2007	22	USM 285 SUMMONS Returned Executed as to A Joe Fish ; served on 10/3/2007. (Entered: 10/05/2007)
10/05/2007	23	SUMMONS Returned Executed as to Richard Roper ; served on 10/3/2007 USM 285; signed by Cindy Davis, Legal Asst (wrb) (Entered: 10/05/2007)
10/05/2007	24	USM 285 SUMMONS Returned Executed as to Janet Baggett ; served on 10/3/2007, (wrb) (Entered: 10/05/2007)
10/05/2007	25	Plaintiff's MOTION to Judicially Notice Falsification of Dockets & To Maintain Paper Record by Osama 'Sam' Odeh (wrb) Entered 10/15/2007)
10/15/2007		(Court only) ***Motions terminated: 11 MOTION to secure service by US Marshalls filed by Osama 'Sam' Odeh per chambers. (klm) (Entered 10/15/2007)
10/17/2007	26	MOTION to grant access to secret dockete, to order clerk to cease double docketing & affidavit in support by Osama 'Sam' Odeh (wrb) (Entered 10/17/2007)

Date Filed	#	Docket Text
10/24/2007	27	USM 285 SUMMONS Returned Executed as to Michael Worley ; served on 10/15/2007. (Entered: 10/24/2007)
10/24/2007	28	USM 285 SUMMONS Returned Executed as to Terry Means ; served on 10/10/2007, (wrb) (Entered: 10/24/2007)
10/24/2007	29	USM SUMMONS Returned Executed as to Charles Bleil ; served on 10/10/2007, (wrb) (Entered: 10/24/2007)
10/24/2007	30	USM 285 SUMMONS Returned Executed as to Angela Lee Henson ; served on 10/12/2007 (wrb) (Entered: 10/24/2007)
10/31/2007	31	USM 285 Returned Executed as to Charles Fulbruge ; served on 10/08/2007 on receptionist (wrb) (Entered: 11/05/2007)